

Sk. Jamir and Etc. Vs. the State

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Court : Orissa

Decided On : Jul-30-1997

Reported in : 85(1998)CLT774; 1998CriLJ2244

Judge : S.C. Datta, J.

Acts : Indian Penal Code (IPC) - Sections 395, 412 and 457

Appeal No. : Jail Criminal Appeal Nos. 57 and 58 of 1995

Appellant : Sk. Jamir and Etc.

Respondent : The State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : R.K. Sahoo, Adv.

Disposition : Appeal allowed

Judgement :

S.C. Datta, J.

1. These appeals are taken-up for hearing together as they arise out of one and same Judgment.

2. In these appeals from Jail, the appellants seek to assail the order of conviction and sentence passed by the learned 1st Additional Sessions Judge on 16-11-1994 in S.C. No. 41/91. All the accused stood charged under Section 395 I.P.C for having committed dacoity in the house of Tarini Charan Padhy on the night of 29-5-1990 at Nigam Nagar, Berhampur. The accused Rama Sahu alias Lalu alias Bhola Sahu and Sk. Jamir' stood further charged under Section 412 I.P.C. for having dishonestly received stolen property obtained by the commission of dacoity.

3. Briefly stated, the prosecution case is that the informant Tarini Charan Padhy (P.W.2) is a resident of Nigam Nagar, Berhampur. In the night of 29/30 -5-1990, he went to sleep along with his family members. He was sleeping along with his second son Jugal Kishore Padhi in one room, whereas his wife Susama Padhi (P.W.4) and the younger son Bimal Kishore Padhy (P.W.5) were sleeping, at about 2.20 A.M. five miscreants entered into the house by breaking open the front door. Three miscreants jumped over the informant and tied him down with his own 'Gamucha' (napkin). They also tied down his second son Jugal who was also then asleep. The informant raised hulla and his younger son and his wife woke up. The culprits entered their room and brought both of them to the room of the informant at the point of knife. Thereafter, they forcibly removed gold ornaments, such as, gold bangles, gold ear-ring, gold chain from the person of his wife Susama. They also forcibly took away the H.M.T. watch which was kept under the pillow of the informant. One of the miscreants, opened the almirah and took away one gold necklace weighing about 3 tolas and one Alfa camera and two spectacles. They also removed some documents and cash amount of Rs. 750/-. During the commission of dacoity, he identified Abdul Kadir, Manirul Mulla and Sk. Jamir. After the commission of dacoity, the miscreants decamped with the booty. At the time of commission of dacoity the culprits also assaulted his wife causing injury on her person. He thereafter rushed to S. N. Pur P. S. and lodged a written complaint with them at about 4.30 A.M. On the basis of the written complaint, an FIR was drawn-up and the case was registered under Sections 457/395 I.P.C. The police took up investigation and then visited the spot where they found mark of violence on the door which was broken and the articles of the house were scattered. The almirah and the trunks were opened. The witnesses were examined and the wife

of the informant, namely, Sushama Padhy was sent for medical examination.

4. While the matter stood thus, on 12-1-91, P.W. 7 along with Sub Inspector of Police H. K. Nanda and other police personnels were conducting anti-dacoity patrol at about 10PM. in the night. At that time, they noticed some persons sitting in the midst of a paddy field about 20 to 25 yards from the road. The police party became suspicious and started to approach them. On seeing the police party approaching them the miscreants took to their heels. After a hot chase, the group led by P.W.7 caught hold of Abdul Kadir while the other group led by S.I.H.K. Nanda caught hold of Sikandar Mulla. At that time A. Raja Rao (P.W.I) and Dabarajakothia were passing by the said road and stopped on the way to see the action. In their presence, Abdul Kadir was searched and a plastic bag containing four live bombs and a loaded police revolver containing five live cartridges were recovered from his possession. House breaking implements made of G. I. pipe was recovered from the accused Sikandar Mulla. Those articles were seized in connection with P. S. Case No. 198 of 1990. On interrogation Abdul Kadir and Sikandar Mulla revealed that they were brought by accused Rama alias Lalu Sahu and accused Sk. Jamir along with other persons from Calcutta to commit dacoity in and near Berhampur. Abdul Kadir revealed that they were involved in many dacoity cases and the booties obtained by committing dacoity were kept in the house of accused Rama Sahu and others. He led the police party and the witnesses to the house of accused Rama Sahu situated at Goodsshed Road, Danjipalli from which house various stolen articles including live cartridges were recovered and seized in presence of witnesses. The police arrested accused Rama Sahu alias Lalu, Sk. Jamir, Amir Mulla and Manurul Mulla on 25-1-91. The T.I. parade was held inside the Jail wherein the informant and his son Vimal Prasad Mishra (P.W.9) identified some of the dacoits. On 7-3-1991, T. I. Parade with respect to the stolen articles at Circle Jail, Berhampur was held in presence of witnesses in which the suspected stolen articles i.e., two numbers of bangles and one gold necklace containing beads were identified by the informant. On 13-3-91 T. 1. parade was held with respect to the accused persons in which the informant Tarini Charan Padhy identified Abdul Kadir; Manurul Mulla and Sk. Jamir, Smt. Sushama Padhy the wife of the informant could not however identify any of the suspects.

5. On completion of investigation, chargesheet was submitted against the accused persons, namely, Abdul Kadir, Sikandar Mulla, Amir Mulla, Manurul alias Mandal Mulla, Lalu alias Bhola alias Rama Sahu and Sk. Jamir under Sections 457/395 I.P.C. Ultimately, charge under Section 395 I.P.C. was framed against all these persons and the trial proceeded. During pendency of the trial and after P.W.5 was examined, it was reported that accused persons, namely, Abdul Kadir, Amir Mulla and Manurul alias Mandal Mulla escaped from the jail and are at large. So the trial proceeded with regard to the present appellants. On 17-9-1994 additional charge under Section 412 I.P.C. was framed against accused Rama Sahu and Sk. Jamir.

6. The accused persons pleaded innocence. On conclusion of trial, learned trial Judge convicted the present Appellants under Section 395 I.P.C. and in view of their conviction under Section 395 I.P.C. they were acquitted of the additional charge under Section 412 I.P.C. and sentenced to suffer rigorous imprisonment for eight years. The accused Sikandar Mulla was found not guilty of the charge under Section 395 I.P.C. and acquitted.

7. Being aggrieved by and dissatisfied with the order of conviction and sentence, Sk. Jamir and Lalu alias Bhola alias Rama Sahu have preferred these appeals from jail.

8. It is contended on behalf of the appellant that the order of conviction and sentence was against the weight of evidence. It is submitted that the T.I. parade was held long after the date of occurrence and that too the accused persons were shown to the witnesses identifying them. Learned counsel appearing for the State, however, supports the judgment.

9. That there had been a dacoity in the house of de facto complainant, viz., Tarini Charan Padhy on the night of 29/30-5-1990 at Nigam Nagar, Berhampur, is clearly established from the evidence of the complainant (P.W.2), his wife Susuma (P.W.4) and their son Bimal (P. W.5). In fact, the defence does not dispute, the commission of dacoity at the residence of the complainant on the night of 29/30-5-1990: The defence, has however, denied that the accused persons had committed dacoity at the residence of the complainant on that night. The complainant (P.W.2) has lodged F.I.R. In the F.I.R. the complainant has, however, given the description

of the miscreants who had committed dacoity at his residence on the night. The accused persons were apprehended by Police on 25-1-1991 i.e. after the lapses of about eight months from the date of occurrence. The T. I. parade was held on 26-2-1991 inside Circle Jail, Berhampur wherein P. W.2 the complainant and his son Bkna (P. W.5) said to have identified the accused persons. Kusuma the wife of the complainant, however, could not identify any of the suspects. Anyway, the complainant states during his evidence in Court that he had identified the accused persons at the time of commission of dacoity as well as during T. I. parade conducted by the Magistrate. It has been elicited from him during cross-examination that the dacoits who had committed dacoity in his house had tied napkins on their face for which their eyes only were visible. It may be remembered that the incident occurred at the dead of night at about 2.20 A.M. It is not the case of the prosecution that any lamp was burning inside the room when the dacoits raided their house nor it is the case of the prosecution that the dacoits were focussing torch lights and with the help of light it was possible for the de facto complainant and his son to identify the miscreants. It is clear from the evidence of P.W.2 that the miscreants tied napkin around their face to conceal their identity. The learned counsel for the defence submits that the dacoity was committed at the dead of night when the complainant and his family members were fast asleep. No light was burning inside the rooms and the complainant and his family members being all horror stricken could not identify the miscreants during the commission of dacoity. The T. I. parade was held long after the date of occurrence. The learned counsel for the defence vehemently argues that the accused persons were shown to the identifying witnesses before the T. I. parade was held. It is of course true that the prosecution witnesses have stoutly denied this fact, Nevertheless, the fact remains that in the circumstances as disclosed during evidence it was rather impossible for the complainant and the witness to identify the miscreants. The miscreants were not known to the complainant and their family members from before. Therefore, identification of the accused either in Jail or in the dock becomes very much suspect. Learned counsel for the State submits that some of the stolen articles, namely, M.Os. I, II and III belonging to the wife of the informant were recovered from the house of accused Rama Sahu. He submits that this clearly shows that Rama Sahu was responsible for committing dacoity at the

residence of the informant. It is of course true that the T. I. parade of the stolen articles was held where this material objects were identified. T. I. parade was held on 7-3-1991 i.e. long after the commission of the dacoity at the residence of the informant. The learned counsel for the defence submits that these recoveries of the stolen articles from the house of accused Rama Sahu does not show that he took part in the commission of dacoity in the house of the informant. It has already been indicated that the identification of the accused persons was well nigh impossible in the circumstances, which have emerged during trial. The contention of learned counsel for the appellant that the accused persons were shown to the identifying witnesses before the identification was done at the Jail cannot be ignored. Therefore, having regard the facts and circumstances of the case, it cannot be held that the charge under Section 395 I.P.C. had been established against the accused persons beyond any reasonable doubt. The accused persons are, therefore, entitled to be acquitted.

10. In that view of the matter, the appeal succeeds and the order of conviction and sentence passed by the Court below is set aside. The appellants be set at liberty forth with, if not required in connection with any other case.